

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

UNITED STATES OF AMERICA }
v. } } Criminal Case No.:
JACK ROSGA, ET AL. } } 3:10 CR 170

October 28, 2010

COMPLETE TRANSCRIPT OF FINAL CHARGE TO THE JURY
BEFORE THE HONORABLE HENRY E. HUDSON
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES :

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Stephen Miller, Esquire
Sam Kaplan, Esquire
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Counsel on behalf of Mark Spradling

Thomas Collins, Esquire
Counsel on behalf of Leslie Werth

KRISTA M. LISCIO, RMR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT

(The jury is present in the courtroom.)

THE COURT: Ladies and gentlemen, I have one final instruction to give you.

Ladies and gentlemen, in order for you to return a verdict, your verdict must be unanimous as to each count and as to each defendant. Now, you will note on the verdict form it's a bit different from perhaps verdict forms you've seen in the past, because as to Count Number 1 there are specific instructions. Should you find any of the defendants guilty of Count Number 1, you need to also indicate specifically what acts of racketeering you found that were committed, and the number of racketeering acts. Look carefully at the specific instructions on that particular form with respect to Count Number 1.

Now, in pursuing your deliberations, they should go forward in an orderly and business-like fashion. When you get back to the jury room, your first order of business should be to select one of your members to preside over the deliberations. And that individual, in addition to the normal fact-finding functions that each of you have, will have the obligation of being sure that the deliberations go forward in an orderly and businesslike fashion, and that no verdict is returned until each of you have had a thorough

1 opportunity to discuss the issues in the case.

2 I strongly recommend to you that you not begin
3 your deliberations by taking a straw vote or anyone
4 making an emphatic expression of his or her position in
5 the case. Why? Because experience has taught us that
6 sometimes when the jury begins their deliberations by
7 committing themselves to a certain position, it is very
8 difficult to retreat from it, even after a thorough
9 discussion with your fellow jurors reveals to you that
10 perhaps your initial impressions were incorrect. So
11 keep an open mind until you have a chance to discuss
12 the case thoroughly among yourselves before you take a
13 vote.

14 I mentioned to you earlier that it's sometimes
15 very, very helpful to go over the instructions before
16 you begin your deliberation. That way you will know
17 what your goals are and how you will attain them in the
18 case. You will learn what must be proven for each
19 offense, and what type of evidence is appropriate to
20 prove or disprove the various allegations in the
21 indictment.

22 Now, you have a duty to consult with one another
23 with the objective of reaching a verdict if it can be
24 done without offending your personal and individual
25 judgment. In the course of your deliberations, you

1 shouldn't hesitate to reevaluate your position with
2 respect to the weight and the value of the evidence, or
3 with respect to the guilt or innocence of the accused
4 if you feel that perhaps your initial impressions were
5 in error. None of you should ever surrender your
6 honest conviction as to the weight and value of the
7 evidence, or the guilt or innocence of any of these
8 gentlemen solely for the purpose of appeasing your
9 fellow jurors, or for simply completing your jury
10 service. And I'm sure you realize that. This is an
11 important case to everybody - the government - as well
12 as each of these defendants.

13 Now, in a moment I'm going to excuse you until
14 tomorrow morning, and I'm going to give you-all the
15 option of you can begin at 9:00, or you can begin at
16 8:30. We begin here at 8:00, so if you want to come in
17 at 8:30 in the morning, you may certainly do that.
18 Discuss that among yourselves and make a decision
19 before you leave, and let the Marshal know, and we'll
20 be ready for you when you arrive in the morning.

21 Now, tomorrow morning you will receive a verdict
22 form. You will receive copies of the instructions I
23 gave you. And you will have access to the exhibits.
24 All the documents, and the other items, will be
25 available to you in the jury room. The firearms and

1 the drugs, our court security officer will have in his
2 possession, and if you wish to see the drugs or the
3 firearms they will be brought to you for your
4 examination.

5 When you reach a verdict, please indicate on the
6 verdict form. And again, pay careful attention to the
7 instructions with respect to Count 1. That verdict
8 should be signed by the presiding juror. Remember, it
9 must be unanimous as to each count as to each
10 defendant.

11 Now, during the course of your deliberations, you
12 may very well have questions that you wish to address
13 to the Court. If you do, put them in writing signed by
14 the presiding juror. I'll review them, and I'll
15 respond if I can. However, I tell you in advance,
16 please do not be frustrated if you find that there are
17 questions that you ask that I cannot answer because the
18 law gives very, very little latitude to the presiding
19 judge in providing responses to questions and advising
20 you on the law and the facts once you begin your
21 deliberations; but to the extent that I'm allowed to do
22 so, I will respond.

23 Now, you may notice that there are 14 jurors in
24 the jury box. Two of you have been selected as
25 alternate jurors. In a moment, I'm going to excuse

1 those two alternate jurors. I have to as a matter of
2 law. But I want the two alternate jurors to remain on
3 call until the verdict is returned, because if for some
4 reason a juror cannot serve for some reason during the
5 course of deliberations, we may very well call you in
6 and ask the jury to go back and resume deliberations
7 with all 12 members present. So I want you to remain
8 on call until the verdict is returned.

I also want to tell you that there may very well be an additional stage of these proceedings. And that is that in the event that you return a verdict of guilty as to any of these defendants on Count 1, the government may ask for a hearing with respect to asset forfeiture. It shouldn't take anymore than an hour or so. But I just want to alert you that there is that possibility, and it could extend the time of your jury service by an hour or two.

18 Ladies and gentlemen, at this time I'm going to
19 excuse Juror Number 4 and Juror Number 7. You are the
20 alternate jurors. I thank you so much for your jury
21 service. Remain on call until a verdict is returned in
22 the case.

23 (The alternate jurors are no longer present in the
24 courtroom.)

25 THE COURT: Ladies and gentlemen, at this time all

1 of you are excused until tomorrow morning. Now, it's
2 very, very important because you're in such a delicate
3 stage of the proceedings that you carefully follow my
4 instructions. Do not discuss the case with anyone -
5 anyone whatsoever. Don't discuss the case among
6 yourselves until all of you are present. Avoid any
7 media coverage of this case, or any case of this type.
8 Keep an open mind. Get a good night's rest. We'll see
9 you back here tomorrow morning. You're now excused.

10 (The jury is no longer present in the courtroom.)

11 Several things before the attorneys leave this
12 evening. First of all, I want you to review the
13 verdict form we have put together. Ms. Shultz has it.
14 If you have comments, let me know.

15 And secondly, Ms. Pizzini is going to go through
16 all the evidence and make sure she has it. Make sure
17 that it is in evidence, et cetera. So I don't want any
18 of the attorneys to leave until these processes are
19 done.

20 Tomorrow remain on call. Make sure that Marshal
21 Wray has your phone number so you can be contacted. I
22 want you to return within 10 minutes notice tomorrow,
23 so be available.

24 MR. BARLEY: So you're saying we can remain in our
25 offices so long as we're within 10 minutes from here?

THE COURT: Yes, sir. That's right. Sure. Just make sure that you stay by a phone, Mr. Barely, so that the Marshal Service or Marshal Wray can give you a call. Be here within 10 minutes.

So I'm going to stand in recess. Look over the verdict form with Ms. Shultz. If you have questions, need my intervention, I'm here. And then Ms. Pizzini will go over the evidence, make sure we have everything and properly marked, et cetera, and ready for the jury tomorrow morning.

Anything further?

MR. DUFFEY: No, Your Honor.

MR. HUNTER: No, Your Honor.

MS. CARDWELL: No, sir.

THE COURT: Okay. Thank you very much. I'll be available if you need me.

Stand in recess.

(The proceeding concluded at 4:44 p.m.)

REPORTER'S CERTIFICATE

I, Krista M. Liscio, OCR, RMR, Notary Public in and for the Commonwealth of Virginia at large, and whose commission expires March 31, 2012, Notary Registration Number 149462, do hereby certify that the pages contained herein accurately reflect the notes taken by me, to the best of my ability, in the above-styled action.

Given under my hand this 29th day of October,
2010.

Krista M. Liscio, RMR
Official Court Reporter